IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 718 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIPBHAI L DESAI

Versus

GRAM PANCHAYAT

Appearance:

1. Special Civil Application No. 718 of 1989

MR NK MAJMUDAR for Petitioner No. 1-2

RULE SERVED BY DS for Respondent No. 1

MR BN PATEL for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/07/2003

ORAL JUDGEMENT

1. The petitioners challenge the order of the Additional Development Commissioner dated 29th October, 1988, passed in Revision Application No.146 of 1988,

under Section 305 of the Gujarat Panchayats Act, 1961, setting aside the order of the Appeal Committee dated 27th April, 1988, whereunder notice issued on the petitioner by the Kadiyadara Gram Panchayat came to be quashed and set aside. By virtue of the order impugned herein, the Revision Application by respondent No.2 herein came to be accepted by the Additional Development Commissioner.

2. The facts of the case, in brief, are that the petitioners are the residents of village Kadiyadara. Respondent No.2 is their neighbour. The petitioners were granted permission to make construction on Khunt Mapni land by Taluka Development Officer, Idar, on 24th May, 1985, upon certaion conditions and in pursuance thereof, the petitioners proceeded with the construction and erected two toilets and two bathrooms on the northern side of their house, which falls into a lane leading to the house of respondent No.2, resulting into a dead end in front of the house of respondent No.2. The construction left open only 6 feet outspace in the lane making the passage impossible for a tractor-trolly and a passage difficult for others to the house of respondent No.2. This construction was carried out by the petitioner without obtaining any permission from Kadiyadara Gram Panchayat. Kadiyadara Gram Panchayat, therefore, passed a resolution for demolition of the said construction of toilets and bathrooms. Following the resolution, notice in question was issued by the Panchayat, which was challenged by the petitioners before the Appellate Committee of the District Panchayat, which passed the order Annexure-D and consequently revision came to be preferred before the Additional Development Commissioner.

3. Learned Advocates, Mr. Majmudar and Mr. B.N. Patel, for parties are present. They are heard at length and Mr. Majmudar has taken this Court through the record and has tried to convince this Court that regularisation is permissible. However, he could not show any provision of law which empowers the authority to regularise an illegal construction unauthorisedly made, by making encroachment on road in a Khunt Mapni land, more so when it causes obstruction to the passage of others.

4. Rule 57-D of the Gujarat Land Revenue Rules, 1972 provides that Khunt Mapni land has to be kept open. There is a proviso to the said Rule permitting use of the land for non-agricultural purpose with previous permission of the Collector. Sub-rule (2) of Rule 57-D provides that, if in contravention of the conditions

annexed to the occupancy under the existing tenure any construction has been made on such land, before the date of commencement of this Chapter, then from the date of contravention, the land shall be liable to the payment of non-agricultural assessment.

5. Having regard to this provision, it is amply clear that the permission granted by the Taluka Development Officer itself was contrary to the provisions contained in the above Rule, namely Rule 57-D. The Development Commissioner has, while passing the impugned order, in terms, observed that the observation of the Appellate Committee of the District Panchayat that there is no encroachment of the road and that it does not cause any obstruction is not correct and is inconsistent with the provisions of Rule and Law. The observation on fact is not controverted. The provisions of Rule and Law appear to be correctly interpreted by the learned Development Commissioner and the petitioner's contruction, therefore, apart from being unauthorised and encroachment on the road, is an obstruction in the passage to the house of respondent No.2. This would be not only relevant but important for the reason that the house of respondent No.2 is located at the dead end of the passage or road and he has no other access to his property and, if that obstruction is leaving only a width of 6 feet for passage on the road in contravention of the provisions contained in the Rules, it would be a premium to the petitioners for their illegal act, if protection is granted by accepting this petition. This Court is, therefore, not inclined to entertain this petition in exercise of its writ jurisdiction under Article 226 of the Constitution. Illegality cannot be permitted to perpetuated at the cost of legitimate right of others. The petition, therefore, must fail.

6. The petition is dismissed. Rule is discharged. Interim relief stands vacated. No costs.

[A. L. DAVE, J.]

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